

REMARKS

Claims 1, 3, and 5-10 are all the claims pending in the application.

Claims 1 and 8 have been amended to incorporate the subject matter of claims 2 and 4, which have been canceled, and the further amendments are supported, for example, on page 36, lines 10-19 and Table 7 of the specification.

Claim 3 has been amended so that it depends from claim 1.

New claim 10 has been added based on, for example, page 17, lines 23-25 of the specification.

Entry of the above amendments is respectfully requested.

I. Response to Rejection of Claims 1 and 4-9 under 35 U.S.C. § 103(a)

Claims 1 and 4-9 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Takaichi et al. (EP 0 443 047) in view of Bungler et al. (US 5,385,748), Takahata (US 4,212,893) and Chalupa et al. (US 5,597,604).

Applicants respectfully traverse the rejection.

Claim 1 is directed to a gel beverage composition for comprehensive nutritional supplementation having a pH ranging from 3-4 and comprising, based on the total weight of the composition, 5-20% by weight of saccharide, 0.1-5% by weight of fat, 2.5-6% by weight of protein material which does not coagulate at pH 3-4 and is at least one material selected from the group consisting of protein hydrolysate having a number average molecular weight of 500-1000, whey protein concentrate, whey protein isolate and desalted whey, 0.2-3% by weight of citric acid, 0.2-1.5% by weight of at least one acid component selected from the group consisting of gluconic acid and phosphoric acid, 0.01-0.5% by weight of an emulsifying agent, 0.1-1% by weight of agar, and 65-90% by weight of water. Claim 8 is directed to a method of

preparing the composition of claim 1 and claim 10 is directed to a composition comprising 0.2-0.5% by weight agar.

Takahata does not disclose the use of protein material which does not coagulate at pH 3-4 and is at least one material selected from the group consisting of protein hydrolysate having a number average molecular weight of 500-1000, whey protein concentrate, whey protein isolate and desalted whey, as recited in claims 1, 8, and 10.

In addition, the Examiner recognizes that Takaichi does not disclose the use of citric acid, ascorbic acid, agar, gellan gum, lactic acid, locust bean gum, guar gum, xanthan gum, and the pH of the composition. Thus, the Examiner relies on Bunger, Takahata and Chalupa for making up the deficiencies of Takaichi. Specifically, the Examiner relies on Bunger as teaching the use of guar gum from about 0.001 to 0.1 % and xanthan gum in an amount of 0.1-0.3% (*see* col. 3, lines 33-41 and col. 3, line 64 to col. 4, line 7), preservatives (col. 6, lines 8-14), emulsifiers (col. 6, lines 17-23), the pH of 3.0-6.0 (col. 7, lines 20-28), citric acid (col. 8, lines 13-16). The Examiner relies on Takahata as teaching the use of agar in an amount of less than 0.1% (col. 3, lines 14-26). The Examiner further relies on Chalupa as teaching the use of 0.01 to 0.15% gellan gum (col. 1, lines 62-65). The Examiner takes the position that it would have been obvious to modify Takaichi by adopting and using the teachings of Bunger, Takahata and Chalupa to make a gelled beverage.

Applicants respectfully disagree.

Takahata discloses that agar is preferred as an auxiliary stabilizing agent in an amount smaller than 0.1% by weight, or preferably 0.03-0.06% by weight of the finished product. Thus, even if Takahata were combined with Takaichi, the combination would not result in the claimed amount of 0.1-1% agar.

Furthermore, the composition of claims 1, 8, and 10 comprise the combination of citric

acid, gluconic acid and phosphoric acid. None of the cited references discloses, teaches or suggests the use of such combination of acids.

For at least the above reasons, it is respectfully submitted that the references fail to teach or suggest every element of claims 1, 8, and 10, and thus, a *prima facie* case of obviousness has not been established.

Moreover, the present invention provides unexpectedly superior results. These results are achieved by the use of citric acid in combination with gluconic acid and phosphoric acid. As is clear from Tables 7 and 9 of the specification, the gel beverage comprising the acid components shows high heat resistance. Such effects cannot be expected, even by one of ordinary skill in the art.

In view of the above, it is respectfully submitted that claims 1, 8 and 10 are patentable over the cited references.

Additionally, claims 5-7, and 9 depend from claims 1 or 8, and thus, it is respectfully submitted that these claims are patentable for at least the same reasons as claims 1 and 8.

In view of the above, withdrawal of the rejection is respectfully requested.

II. Response to Rejection of Claims 2-3 under 35 U.S.C. § 103(a)

Claims 2-3 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Takaichi further in view of Shimamura et al. (US 6,395,508).

Applicants respectfully traverse the rejection.

It is submitted that claim 3 depends from claim 1, and thus is patentable for at least the same reasons as claim 1. In addition, Shimamura does not make up for the deficiencies of Takaichi.

Further, claim 2 has been canceled, and thus the rejection of claim 2 is now moot.

In view of the above, withdrawal of the rejection is respectfully requested.

III. Response to Rejection of Claims 1-9 under 35 U.S.C. § 103(a)

Claims 1-9 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Emoto (EP 1 046 347). The Examiner's position is not repeated herein in its entirety.

Applicants respectfully traverse the rejection.

Emoto discloses a gelatinous food product having a pH of 3.3-4 and comprising 10-50% by weight a solid content and 50-90% water. The gel of Emoto is formed by coagulation of protein. *See* page 3, lines 2-13. Thus, Emoto does not disclose, teach or suggest the use of a protein that does not coagulate at a pH of 3-4.

In fact, Emoto discloses that it is necessary that the protein form an isoelectric gel at the pH of the food product, *i.e.*, pH 3.3 to 4 . Thus, Emoto teaches away from the use of a protein that does not coagulate at a pH of 3-4.

Accordingly, Emoto fails to teach or suggest the present invention according to claims 1, 8 and 10, and one of ordinary skill in the art would not arrive at the claimed invention based on the disclosure of Emoto.

Furthermore, claims 3, 5-7, and 9 depend from claims 1 or 8. Thus, it is respectfully submitted that these claims are patentable for at least the same reasons as claims 1 and 8.

In view of the above, withdrawal of the rejection is respectfully requested.

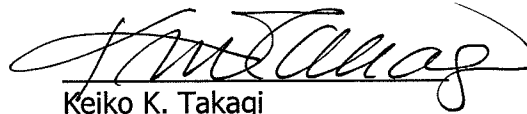
IV. Conclusion

For the foregoing reasons, reconsideration and allowance of claims 1, 3, and 5-10 is respectfully requested.

If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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